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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW CERVANTES,

Defendant and Appellant.

A144899

(Contra Costa County  
Super. Ct. No. 5-140402-9)

Following the passage of Proposition 47, also known as the Safe Neighborhoods and Schools Act, persons currently serving a sentence for certain designated felonies may petition for recall of the sentence to reduce the felonies to misdemeanors. (Pen. Code, § 1170.18.)

In January 2015, defendant Andrew Cervantes filed a section 1170.18 petition for resentencing. He was then serving a felony sentence for grand theft. The trial court denied the petition, finding that defendant was ineligible for resentencing because his grand theft conviction was the result of a negotiated plea, in which all the parties agreed that the incident involved felonious, not misdemeanor, conduct. In March 2015, defendant filed the present appeal

On April 11, 2016, defendant's counsel submitted a letter advising us that the trial court had granted a renewed motion for Proposition 47 consideration. As a result, the trial court reduced appellant's felony conviction to a misdemeanor. Counsel then asked that we suspend any action on instant appeal, as it appeared to be moot. Counsel advised us that she would remit a copy of the minute order as soon as she located it.

On May 4, 2016, defendant's counsel sent a letter to us, enclosing a certified copy of the minute order, dated February 5, 2016. The minute order reflects that the trial court granted defendant's Proposition 47 motion over the prosecution's objection. The trial court granted defendant's motion for release on his own recognizance; the court also terminated defendant's probation.

The People have not opposed defendant's request for dismissal, nor is there any indication that the People have appealed the trial court's order of February 5, 2016.

The abandonment or voluntary dismissal of a criminal appeal is governed by California Rules of Court, rule 8.316(a), which provides: "An appellant may abandon the appeal at any time by filing an abandonment of the appeal signed by the appellant or the appellant's attorney of record . . . . ¶ (b)(2) If the record has been filed in the reviewing court, the appellant must file the abandonment in that court. The reviewing court may dismiss the appeal and direct immediate issuance of the remittitur." In light of the circumstances discussed herein, we will dismiss the appeal as abandoned.<sup>1</sup>

#### **DISPOSITION**

The appeal is dismissed. The remittitur shall issue forthwith.

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<sup>1</sup> By this holding, we express no opinion regarding the propriety of the trial court's entertainment of the motion for reconsideration while the instant appeal was pending. (See, e.g. *People v. Scarbrough* (2015) 240 Cal.App.4th 916, 929 [trial court lacked jurisdiction to recall sentence and to resentence pursuant to § 1170.18 while appeal pending].)

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REARDON, J.

We concur:

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RUVOLO, P. J.

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RIVERA, J.